


OLL 84-2292/1
2 July 1984

Hallmark
Hig. Sen.

MEMORANDUM FOR: Director of Security
General Counsel

FROM:


Chief, Legislation Division
Office of Legislative Liaison

STAT

SUBJECT: Department of Justice Views on S. 2470

1. Attached for your review and comment are the Department of Justice's (DOJ) views on S. 2470, a bill which provides a screening procedure for those individuals having unescorted access to nuclear power facilities. The bill provides that every person licensed or in the process of being licensed to operate a nuclear utilization facility must be fingerprinted before he or she is provided unescorted access to this facility. This fingerprinting will allow any relevant criminal history information to be considered before providing access to the individual. In the attached draft letter prepared by DOJ, DOJ has noted several revisions that they would like to see included in the bill.

2. I would appreciate your reviewing DOJ's suggested revisions and providing your comments to me on the attached letter by next Tuesday, 3 July. Your cooperation in this matter is much appreciated.

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Attachment

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U.S. Department of Justice

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Office of Legislative and Intergovernmental Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

Honorable Strom Thurmond
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

By letter dated March 28, 1984, you transmitted a copy of S.2470 to the Department of Justice (DOJ) and requested that the DOJ provide comments on the bill to your Committee.

S.2470 recognizes the potential for harm to the national security if an individual having access to nuclear power facilities and nuclear materials should abuse such access. To diminish such potential for harm or damage, the bill provides for a screening procedure for those having unescorted access to nuclear power facilities. Thus, the bill proposes amending the Atomic Energy Act of 1954 to add a new Section 149. This Section provides that every person licensed or in the process of being licensed to operate a utilization facility pursuant to certain sections of the Act shall require that each individual allowed unescorted access to the facility be fingerprinted. These fingerprints shall be submitted to the Attorney General through a person or persons designated by the Nuclear Regulatory Commission (NRC) in consultation with the Attorney General for identification and appropriate processing. The NRC, by rule may relieve persons from the obligations of this requirement if such action is consistent with the NRC's responsibilities.

This language is similar to other laws which permit the DOJ to perform identification checks for certain individuals in sensitive areas. These checks are handled by the FBI's Identification Division. For example, under Section 14(f) of Public Law 94-29, every member of a national securities exchange, broker, dealer, etc., is required to submit fingerprints of its partners, directors, officers, and employees to the Attorney

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General for identification and appropriate processing. Further, Section 233 of Public Law 97-444 provides that each commodities futures association must require applicants to be fingerprinted and must submit the fingerprints to the Attorney General for identification and appropriate processing. The DOJ believes that the interest of the NRC in insuring the security of its facilities merits a law giving them the ability to screen certain individuals having unescorted access to the facilities by requiring such individuals to undergo a criminal history record check by the FBI's Identification Division.

However, although the DOJ supports the intent of this bill, we have identified several concerns with the proposed new Section 149, (Subsection a.) of the Atomic Energy Act. This Subsection provides the following:

"a. Every person in the process of being licensed or licensed pursuant to section 103 or 104b to operate a utilization facility shall require that each individual allowed unescorted access to the facility be fingerprinted. All fingerprints obtained by a licensee as required in the preceding sentence shall be submitted to the Attorney General of the United States through a person or persons designated by the Commission in consultation with the Attorney General for identification and appropriate processing. Notwithstanding any other provision of law, the licensee may receive from the Attorney General the results of such search."

For the reasons set forth below, the DOJ recommends the following changes to this Subsection of the bill:

1. In the second sentence of the proposed Subsection, between "licensee" and "as required" insert "or potential licensee."

This change is recommended to clarify an apparent discrepancy in the Subsection as currently written. In the first sentence of the Subsection, the bill provides that "every person in the process of being licensed or licensed" shall require that individuals with unescorted access to

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the facilities be fingerprinted. This language would therefore apply to both licensees and potential licensees. However, in the second sentence, only a licensee is mentioned as being required to submit the fingerprints of certain individuals to the Attorney General for appropriate processing. The DOJ can see no reason why the potential licensee should be required to have certain individuals fingerprinted, but then be precluded from sending those fingerprints to the Attorney General through the appropriate channelling person and subject to the guidelines and procedures established to accommodate these record requests. Therefore, the DOJ recommends that the second sentence be amended to specifically include potential licensees.

2. The last sentence of the proposed Subsection is deleted and the following is substituted in its place:

"The Attorney General may provide all the results of the search, notwithstanding any other provision of law, to such person or persons as designated by the Commission in consultation with the Attorney General."

The second sentence of this Subsection provides that all fingerprints obtained by a licensee shall be submitted to the Attorney General through a person or persons designated by the NRC in consultation with the Attorney General. This language, by providing for a channelling agency or authority, recognizes the large administrative burden which would be placed on the FBI if it had to determine whether each individual licensee was an appropriate party to make a record check request. In adopting this language, the channelling agency would assume the administrative burden of approving the requests of the licensees, and protecting against misuses of the criminal history information. (This procedure is similar to that used by the securities and commodities futures industries.)

Although the bill establishes the channelling agency for submission of the fingerprint cards, it ignores this entity when it addresses who should receive the criminal history information. In the last sentence of this Subsection, only the licensee is authorized to receive the results of the criminal history record search. The DOJ objects to this language which restricts to whom

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the DOJ can furnish the record. First, the current language would not permit a potential licensee to receive the record. Second, the language ignores the existence of the channelling authority which would be funnelling the fingerprints to the Attorney General but would be precluded from receiving the records. At this time, the DOJ cannot speculate as to whether it would be more efficient and less burdensome on the FBI to have the channelling authority or the licensees and potential licensees receive the record information. Therefore, the DOJ recommends that the language be changed as suggested above to allow the NRC in consultation with the Attorney General to make the determination as to whom the record check shall be sent.

The DOJ recommends enactment of this legislation if amended as suggested above. The Office of Management and Budget has advised DOJ that there is no objection to the submission of this report from the standpoint of the administration's program.

Sincerely,

Robert A. McConnell
Assistant Attorney General
Office of Legislative and
Intergovernmental Affairs